A BILL FOR AN ACT

RELATING TO THE LANDLORD-TENANT CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the State has one of the highest percentages of renter households in the nation, with forty-three per cent of households in the State consisting of renters. The legislature recognizes that the State also has the least amount of affordable housing in the nation, resulting in thousands of families in the State, many whom are already facing eviction, being unable to find alternative housing. The legislature further recognizes that evictions increase homelessness, unemployment, crime, and mental and physical illness. Further, children who experience an eviction often show signs of slower academic progress and other developmental impairments. Additionally, each eviction results in significant financial and social costs to the evicted household and the surrounding community.

The legislature believes that eviction procedures must carefully balance the landlord's need for sufficient enforcement against the tenant's need for sufficient protection. The
legislature further finds that without adequate safeguards, tenants become targets for abuse during these eviction proceedings. Currently, the residential landlord-tenant code makes it difficult for tenants to defend themselves against wrongful evictions. While the code clearly outlines landlords' responsibilities, it fails to provide tenants with suitable methods of recourse and ways to hold landlords accountable in various situations.

The legislature notes that leases, like other contracts, are reciprocal. The Hawaii supreme court has held that landlords cannot require a tenant to pay rent if the tenant doesn't receive the basic services to which they are entitled. While many states have passed laws specifying that tenants cannot be forced to pay rent for uninhabitable premises, the legislature has failed to formally recognize this principle, resulting in a lack of enforcement and numerous unjust and illegitimate evictions.

The legislature acknowledges that landlords are prohibited from retaliating against tenants who request repairs to their respective homes or complain about health or safety code violations. However, although the residential landlord-tenant
code guarantees compensation for other landlord offenses, it also places on the tenant the burden of proving entitlement to compensation for a landlord’s retaliation. The result is often that tenants who have been retaliated against are not made whole, allowing landlords to continue these retaliatory practices.

Accordingly, the purpose of this Act is to:

(1) Prohibit landlords from recovering possession of dwelling units from tenants if habitability of premises is significantly impaired; and

(2) Provide remedies for unlawful retaliatory evictions.

SECTION 2. Section 521-42, Hawaii Revised Statutes, is amended to read as follows:

"§521-42 Landlord to supply and maintain fit premises. (a) The landlord shall at all times during the tenancy:

(1) Comply with all applicable building and housing laws materially affecting health and safety;

(2) Keep common areas of a multi-dwelling unit premises in a clean and safe condition;

(3) Make all repairs and arrangements necessary to put and keep the premises in a habitable condition;
(4) Maintain all electrical, plumbing, and other facilities and appliances supplied by the landlord in good working order and condition, subject to reasonable wear and tear;

(5) Except in the case of a single family residence, provide and maintain appropriate receptacles and conveniences for the removal of normal amounts of rubbish and garbage, and arrange for the frequent removal of such waste materials; and

(6) Except in the case of a single family residence, or where the building is not required by law to be equipped for the purpose, provide for the supplying of running water as reasonably required by the tenant.

Prior to the initial date of initial occupancy, the landlord shall inventory the premises and make a written record detailing the condition of the premises and any furnishings or appliances provided. Duplicate copies of this inventory shall be signed by the landlord and by the tenant and a copy given to each tenant. In an action arising under this section, the executed copy of the inventory shall be presumed to be correct.

If the landlord fails to make such an inventory and written
record, the condition of the premises and any furnishings or
appliances provided, upon the termination of the tenancy shall
be rebuttably presumed to be the same as when the tenant first
occupied the premises.

(b) The landlord and tenant may agree that the tenant is
to perform specified repairs, maintenance tasks, and minor
remodeling only if:

(1) The agreement of the landlord and tenant is entered
into in good faith and is not for the purpose of
evading the obligations of the landlord;

(2) The work to be performed by the tenant is not
necessary to cure noncompliance by the landlord with
section 521-42(a)(1); and

(3) The agreement of the landlord and tenant does not
diminish the obligations of the landlord to other
tenants.

(c) If a landlord's failure to materially comply with
subsection (a) results in the significant impairment of the
habitability of the premises:

(1) No action or proceeding to recover possession of the
dwelling unit may be maintained against the tenant.

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nor shall the landlord otherwise cause the tenant to be removed from the dwelling unit involuntarily; and

(2) The tenant’s liability for rent shall not exceed the fair rental value of the premises."

SECTION 3. Section 521-74, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any tenant from whom possession has been recovered or who has been otherwise involuntarily dispossessed, in violation of this section, is entitled to recover the damages sustained by the tenant, an amount equal to two months rent or free occupancy for two months, and the cost of suit, including reasonable attorney’s fees."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

INTRODUCED BY:  

[Signature]

JAN 22 2019
Report Title:
Landlord-Tenant Code; Habitability; Retaliatory Evictions; Remedies

Description:
Prohibits landlords from recovering possession of dwelling unit from tenants if habitability of premises is significantly impaired. Sets a tenant's liability for rent if habitability of premises is significantly impaired. Provides remedies for retaliatory evictions.

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